

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-186064

DATE: March 23, 1977

MATTER OF: William Rankin, Jr. - Detail to Supergrade
Position

DIGEST: Employee at GS-15 level was detailed to GS-17 position for more than 120 days without agency request for Civil Service Commission (CSC) approval as required by regulations. Employee was subsequently permanently promoted to the GS-17 position with CSC approval. Employee is not entitled to retroactive temporary promotion for period of detail since the law requires CSC approval of appointee's qualifications for promotion to GS-17, level. Subsequent approval of employee's qualifications for permanent position by CSC does not constitute endorsement of his qualifications for promotion during his detail. Moreover, CSC regulations require prior approval before appointments may be made to supergrade positions covered by 5 U.S.C. § 3324(a).

This action concerns a request for an advance decision from Mr. Billy J. Brown, Director, Personnel Division, Internal Revenue Service (IRS), dated March 3, 1976, as to whether Mr. William Rankin, Jr., an employee of the IRS, is entitled to a retroactive temporary promotion incident to his detail to the position of Acting Director, Internal Audit Division, for approximately 11 months.

Mr. Brown states that on May 10, 1972, Mr. Rankin was detailed from his permanent position as Chief, Data Processing Activities Branch, a GS-15 position, to be the Acting Director, Internal Audit Division, a GS-17 position in the Office of the Assistant Commissioner (Inspection). Mr. Rankin remained in this detail (without prior approval from the Civil Service Commission for the period beyond 120 days) until April 6, 1973, at which time he was officially selected as permanent Director and promoted to GS-17, with the approval of the Civil Service Commission. The delay in promoting Mr. Rankin was due to the fact that a great number of changes were occurring in the organization and no permanent Assistant Commissioner was appointed until December 1972. As soon as the Assistant Commissioner was appointed, action was taken to fill the Director's position.

Attachment 2 to CSC BTN. NO. 300-40 (2)

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In view of our decision in the Turner-Caldwell case, B-183086, December 5, 1975, 55 Comp. Gen. 539, Mr. Brown asks whether Mr. Rankin is entitled to a retroactive temporary promotion for having been detailed to a higher grade position for more than 120 days. In that decision, we granted backpay to two employees who had served extended details in higher grade positions. Our decision was based on an interpretation by the Board of Appeals and Review that, under the Commission's regulations, if an agency detailed an employee to a higher grade position for more than 120 days without seeking prior approval from the Commission, the employee would be entitled to a retroactive temporary promotion from the 121st day of his detail until the detail terminated.

In the instant case, Mr. Rankin was detailed to a higher grade position for approximately 11 months, and the IRS failed to apply to the Commission for approval to extend the detail.

As Mr. Brown points out however, 55 Comp. Gen. 539, supra, did not address the situation in which the employee was detailed to a supergrade (GS-16, GS-17, or GS-18) position. That decision involved only the entitlement of employees to retroactive temporary promotions to positions not subject to the limitations found in 5 U.S.C. §§ 3324(a) and 5108(a) (1970).

Section 3324(a), supra, states in pertinent part:

"An appointment to a position in GS-16, 17, or 18 may be made only on approval of the qualifications of the proposed appointee by the Civil Service Commission. * * *"

The relevant part of section 5108(a) is as follows:

"* * * A position may be placed in GS-16, 17, or 18 only by action of, or after prior approval by, a majority of the Civil Service Commissioners."

Pursuant to the authority of 5 U.S.C. § 3324(b) (1970), the Commission has issued regulations concerning promotions to the GS-16, GS-17, and GS-18 levels. Section 305.505(b) of title 5, Code of Federal Regulations, states:

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"Promotion. Subject to § 305.502 and to prior approval by the Commission of the qualifications of the employee, an agency may promote a career or career-conditional employee to an initial career executive assignment, or from one career executive assignment to another."

Federal Personnel Manual, chapter 305, subchapter 3-3(f), states the following with respect to such promotions to the GS-16, GS-17, or GS-18 levels:

"Qualifications approval. The appointing officer reports his selection to the Civil Service Commission. However, as required by law, he may not effect the assignment until the Commission specifically approves the qualifications of the person selected."

By decision of today, B-183086, we have reaffirmed our decision of December 5, 1975, in the Turner-Caldwell case, 55 Comp. Gen. 539. However, in today's decision we have qualified Turner-Caldwell as follows:

"* * *It is necessary, however, that the employee satisfy the requirements for a retroactive temporary promotion. In this connection, certain statutory and regulatory requirements could affect the entitlements of an employee otherwise qualified for corrective action as a result of an improper extended detail. For example, an employee improperly detailed for an extended period, who fails to meet the time in grade requirements of the 'Whitten Amendment,' 5 U.S.C. § 3101, note, would not become entitled to a retroactive temporary promotion until such time in grade requirements were satisfied. See 55 Comp. Gen. 539, 543. Similarly, an employee improperly detailed to a grade GS-16, 17 or 18 position for an extended period would not be entitled to a retroactive temporary promotion

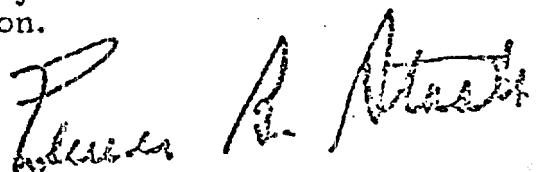
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unless the provisions of 5 U.S.C. § 3324 governing appointments to such supergrade positions had been complied with."

We have been informally advised that there was no position in the normal line of promotion in the grade immediately below that of the GS-17 position to which Mr. Rankin was detailed and we understand he was in the GS-15 position for 1 year prior to his detail. Thus, the prohibitions in the "Whitten Amendment" do not appear to apply in this case. However, as to whether Mr. Rankin may be entitled to a retroactive temporary promotion to a supergrade position in light of 5 U.S.C. § 3324(a), we note that Civil Service Commission approval of Mr. Rankin's qualifications for a temporary promotion to the GS-17 level was neither sought nor granted while he was on detail. The Commission did eventually approve Mr. Rankin's qualifications for a permanent promotion to the GS-17 level. However, this Office cannot accept the subsequent approval of Mr. Rankin's qualifications for a permanent GS-17 promotion as an endorsement of his qualifications for a retroactive temporary promotion for the period of his detail. It is solely within the purview of the Civil Service Commission to approve qualifications of an appointee for a supergrade position and we are without authority to make judgments of this kind.

Moreover, the above-cited regulations are quite clear that Commission approval of the appointee's qualifications must be granted prior to promoting the appointee to a supergrade position. An agency cannot unilaterally place an employee in a supergrade position and at some later date request Commission approval of his qualifications for the purpose of granting him a retroactive appointment.

Accordingly, Mr. Rankin may not receive a retroactive temporary promotion with backpay for his services as Acting Director in a grade GS-17 position.


Comptroller General
of the United States